

November 22, 2021

Chief Copyright Royalty Judge Suzanne Barnett
Copyright Royalty Judge David R. Strickler
Copyright Royalty Judge Steve Ruwe
U.S. Copyright Royalty Board
101 Independence Ave SE
P.O. Box 70977
Washington, DC 20024-0977

SENT VIA ELECTRONIC DELIVERY

RE: DETERMINATION OF ROYALTY RATES AND TERMS FOR MAKING
AND DISTRIBUTING PHONORECORDS, DOCKET NUMBER 21-CRB-0001-
PR (2023-2027) (Phonorecords IV)

Honorable Judges:

My name is Monica Corton, and I am the CEO and Founder of Go to Eleven Entertainment, a newly formed independent music publishing company that is funded. I have been in the music publishing business for over thirty years, twenty-seven of which were spent as the Senior Executive Vice President of Creative Affairs & Licensing at Next Decade Entertainment. My experience is in all areas of music licensing, registrations, and royalty payments, and my former clients included the catalogs of the band Boston, Harry Belafonte, Vic Mizzy (the “Addams Family Theme” and “Green Acres Theme”), Sammy Hagar, and many more.

It is my understanding that the CRB judges are being asked to accept a Motion to Adopt a freeze or a non-rate increase for all mechanical licensing uses for physical phonorecords, i.e., CDs and vinyl, permanent digital downloads, ringtones and music bundles (when multiple songs are downloaded in groups) for the Rate Period of 2023 to 2027. The rates for these types of uses have been frozen and have not increased for any music publisher or songwriter since 2006. In the past, the National Music Publishers Association (“NMPA”) has explained these freezes as a necessary component to their negotiation for an increase in the digital streaming rates for mechanical licenses. For many years (2006-2021), I have gone along with this explanation, but after fifteen (“15”) years of having no increase on any physical product or digital downloads, I now believe it is completely unfair and no longer justifiable for music publishers and songwriters, particularly the

independents and DIY creators (do-it-yourself), to have been denied an increase in these rates after fifteen (15) years of allowing record labels to get away without paying any increase whatsoever, and now face being blocked from a raise for another five (“5”) years.

I originally wrote comments to you on July 26, 2021, and I have included those comments below. As there was an extension provided, I felt I should augment my former submission to you with a practical reason for why I believe that physical and digital download mechanical royalty rates should increase, at least by a cost of living, for songwriters and publishers for the Rate Period 2023-2027.

The one format in physical product that seems to be surging now is vinyl. If one visits the Amazon.com shop, new releases of vinyl are selling anywhere from \$24.98 to \$49.99 at retail. Generally, the wholesale selling price for a label is half of the retail selling price. Therefore, in this scenario, the labels are making anywhere from \$12.49 to \$24.99 per unit. Under the current physical mechanical rate which would stay the same if you decide not to increase the royalty rate for physical copies and digital downloads, a publisher would be paid \$.91 per record with a ten (10) song cap (standard practice) for the right to use all the songs on that release. However, most singer/songwriters have what is called a controlled composition clause in their recording agreement which requires that they agree to a reduced rate of 75% of the statutory rate with a cap of ten (10) songs. This means that the real rate for most singer/songwriters on an album is \$.6825 for all the songs on any given album.

Therefore, the label is making anywhere from \$11.8075 to \$24.3075 of which a small portion will be paid to the artist for artist royalties and some portion will be paid for the expense of making the record and distributing it. The songwriter and the publisher will thereafter, divide the \$.6825 in half so that the songwriter will eventually receive \$.3412 for the ENTIRE ALBUM of songs, often recording and releasing more than ten songs because creatives tend to release 12-14 songs on any given album which further reduces the mechanical rate per song.

I ask you, does it seem fair to you that the record label should make \$11.875 to \$24.3075 per record and the singer/songwriter who wrote EVERY SONG ON THE ALBUM will make \$.3412?

Songwriters rarely get a say in any of these hearings. Digital rates have devastated whole swaths of our creative songwriter community. Please consider that after fifteen (15) years, it's time to increase the physical mechanical rate and the digital

download rate for songwriters and publishers. We must create some kind of parity for songwriters in the sale of physical product and digital downloads, or our music ecosystem will begin to fail.

Best wishes,

Monica Corton

CEO & Founder

Go to Eleven Entertainment

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July 26, 2021

Chief Copyright Royalty Judge Jesse M. Feder
Copyright Royalty Judge David R. Strickler
Copyright Royalty Judge Steve Ruwe
U.S. Copyright Royalty Board
101 Independence Ave SE
P.O. Box 70977
Washington, DC 20024-0977

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DIY creators (do-it-yourself), to have been denied an increase in these rates after 15 years of allowing record labels to get away without paying any increase whatsoever and now face being blocked from a raise for another five (“5”) years.

To date, the justification for not increasing our physical and digital download mechanical royalty rates has been a fear of potentially stalling or disrupting the transition to the distribution of music digitally. We now are long past that transition, and the major record labels who are pressing for a freeze or no increase in our mechanical rates now are very stable businesses. Indeed, they are flourishing. Universal Music Publishing Group is expected to go public, the major labels are signing more catalog than ever before, and they all are claiming a very healthy, booming industry in the media and to their investors. Part of the reason they are so financially sound is because they are not paying their fair share in mechanical royalties to creators when it comes to physical product, digital download, ringtone, and music bundle mechanical royalties.

You might ask, “Why are the parties outlined in the Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations agreeing to this freeze on mechanical rates?” Let’s look at who the parties are that are agreeing: all the major labels, all of their sister music publishing companies, such as Sony Music, Universal Music Publishing, Warner/Chappell Music, and the Nashville Songwriters Association International (“NSAI”). The odd man out is NSAI, a songwriter organization based in Nashville. Why would songwriters approve of a rate that does not allow them to make a living from the mechanical licensing of their songs? The answer is unclear as many NSAI members, when asked, tell me that they are unaware that their organization is selling out their member’s copyrights for an under-market mechanical rate price in the 2023-2027 mechanical rate negotiations with the CRB. A perusal of the NSAI website shows nothing about NSAI’s participation in these negotiations or the positions it is taking in such negotiations. If their membership does not know that NSAI is agreeing to freeze these mechanical rates, how can the songwriter member of NSAI be a “willing buyer, willing seller”?

The NMPA’s Motion to Adopt Settlement states “the Settlement represents the consensus of buyers and sellers representing the vast majority of the market for “mechanical” rights for Subpart B Configurations”, yet this is incorrect. It seems likely that songwriters represented by the major labels have no idea that their publisher is agreeing to not increase their mechanical royalties for another 5 years, for a total twenty-one (“21”) years of non-increases in physical product, digital download, ringtone, and music bundle mechanical rates. While these songwriters

have been denied any increased rates, nearly everything else in the world has increased in price substantially. There is no food item, rent, mortgage, car, gasoline, school or tax rate that has not increased from 2006 to 2021 and will not increase from 2023 to 2027.

Further, another concern is that the NMPA has kept the negotiations for this subsection very quiet. As a member of many of the music trade organizations and someone who is paying attention to the pulse of independent publishers and songwriters, I can attest that there has been no discussion of these frozen mechanical rates. Outside of the major companies that control copyrights, there is vast market of independents, foreign music publishers/songwriters, and do-it-yourself (“DIY”) creators who have no voice in these hearings or rate settings. These are the people who are having a much harder time making a living from their music. Many of them have songs that sell a lot of physical product and digital downloads, as physical product is still doing well in many niche markets where independent music publishers/songwriters and DIY creators live. These creators are not well-educated in music publishing, either from an industry knowledge of licensing perspective or a legal perspective (where they would follow the day-to-day happenings of the CRB hearings.) They are the silent 40+% of the market that makes up the independent side of music publishing. We are a mighty group. We represent thousands of creators, and our numbers are increasing the balance of the business every year, so much so that Sony Music just bought AWAL, a formerly independent label that administered master rights for thousands of DIY creators and was owned by Kobalt. Please read (<https://www.rollingstone.com/pro/features/why-did-sony-music-just-spend-430-million-on-kobalt-indie-label-awal-1122350/>).

Are you certain that those AWAL artists, who often also are the songwriters of the songs that they record, have any idea that their new label owner is advocating for them not to get a mechanical rate increase for physical copies, digital downloads, ringtones, and music bundles for the next 5 years, after already 15 years of not receiving an increase in their mechanical rates? I would argue that a significant majority of them have no idea that this is happening.

There is reference in several places that the major labels and major publishers are party to some “side deal” which ostensibly could mean the major publishers are receiving some extra compensation for these frozen rates with some additional payments that effectively make the major music publishers mechanical rates increase their rates for physical mechanicals, digital downloads, ringtones, and

music bundles. What is this settlement? Who is party to it? How will it affect the music publishing industry at large?

I would ask that the CRB consider raising the mechanical rates for physical product, digital downloads, ringtones, and music bundles to at least a standard of living increase since 2006, which I have calculated using the CPI Inflation Calculator that is provided by the U.S. Bureau of Labor Statistics (https://www.bls.gov/data/inflation_calculator.htm). This would mean that the physical mechanical rate and the digital download rate for songs under five minutes would increase to \$.12 per unit and the per minute rate for anything over five minutes would increase to \$.02 per minute. The ringtone rate would increase to \$.33 per ringtone, and the music bundle rate should increase proportionally as well. Unfortunately, I am unclear regarding where the music bundle rates stand now, but the calculator is very easy to use, and I leave it to the CRB judges to assist reasonably in determining the increase for said music bundle mechanical royalty rate(s). These mechanical rates should take effect on January 1, 2023 and be the starting point for the next rate period. In addition, the rate should increase each year of the 5-year term as is the standard with all other mechanical rates that are set by the CRB.

I believe this is the only fair and equitable way to deal with these frozen mechanical rates, and I hope that my explanation on behalf of thousands of independent publishers and songwriters who represent the independent and DIY communities will give the CRB judges pause to reconsider the physical product, digital download, ringtone, and music bundle mechanical rates included in Subpart B for the period 2023-2027. I am happy to elaborate in any way regarding any aspect of this letter should the CRB judges like further explanation on my reasoning herein.

Best wishes,
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